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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,308	10/20/2003	Kate E. Nordland	86012-34800-USPT	2871
28763 7590 04/17/2007 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44th Floor NEW YORK, NY 10112-4498			EXAMINER BRADEN, SHAWN M	
			ART UNIT 3781	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/689,308

Applicant(s)

NORDLAND ET AL.

Examiner

Shawn M. Braden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 and 64-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39, 64-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/19/2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 11-14, 17-32, 34-38, 40, 64-67, 69-75 and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) in view of Buchalski (USPN 5,816,484).

With respect to claims 1, 15, 29, 35, 64 and 72, Oman discloses the invention substantially as claimed. However, Oman does not disclose a polymeric container that is an integrally formed, non-foldable, continuous body portion with a rim encompassing and projecting laterally outwardly from the continuous body portion.

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Buchalski teaches that it is known in the art to provide a one piece polymeric container that is integrally formed for the purpose of cheaper construction than cardboard (col. 1, ln.47) and that one piece polymeric container does not allow food to leak through the container when stored for a substantial period of time (col. 1, ln. 53). Buchalski further teaches an analogous container with a continuous body portion with a rim (89) encompassing and projecting laterally outwardly from the continuous body portion for the purpose of improved stacking, or to preclude wedge jamming of the nested containers (col. 5 ln. 39-45).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Oman as a one piece polymeric container that is integrally formed with a rim encompassing and projecting laterally outwardly from the continuous body portion, as taught by Buchalski in order to cut cost, improve moisture resistance and to improve stackability.

Also, Tang (USPN 5,685,478) also teaches a well known folded cardboard container and changing the construction to a one piece polymeric container that is integrally formed for the purpose of saving material and making the container washable, microwaveable and recyclable (col. 1 ln. 58 – col. 2 ln. 11)

3. With respect to claims 2 and 3, Oman further shows handles openings in the major flaps 44. Oman discloses the claimed invention except for open able handle portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have open able handle portions since the Examiner takes Official Notice of the equivalence of openable handles and handle openings for their use

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in the art and the selection of any of these known equivalents to provide handles on the Oman container would be within the level of ordinary skill in the art.

4. With respect to claims 4,5,19 and 20, Oman shows an opening on the first minor flap (46) for securing and the same opening (47) on the second minor flap.

5. With respect to claims 6,7,21 and 22, Oman shows that both major flaps have securing portions composed of outward protrusions or hooks (55,56,57,58).

6. With respect to claims 8,23,67 and 75, Oman shows the same fifth and sixth fold as applicant describes (fig 1).

7. With respect to claims 11 and 26, Oman as applied above shows a rectangularly shaped container (fig.1).

8. With respect to claim 12 Buchalski as applied above shows a continuous rim (89)

9. With respect to claims 13,14,27,28,34,40,69 and 77, Oman and Buchalski as applied above discloses the claimed invention except for the thickness of the container as claimed. It would have been an obvious matter of design choice to provide the thickness of the container, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

10. With respect to claim 16 Oman shows a continuous sidewall (fig.1)

11. With respect to claims 17,18,31,32,37,38,65,66,73 and 74, Oman as applied above shows handle openings (42,43) in the major flaps that are adapted to form a handle when the container is closed. Oman discloses the claimed invention except for openable handle portions. It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to have openable handles portions since the Examiner takes Official Notice of the equivalence of openable handles and handle openings for their use in the art and the selection of any of these known equivalents to provide handles on the Oman container would be within the level of ordinary skill in the art.

The examiner's statement of well-known in the art is taken to be prior art because applicant has not held said well-known statement in contention.

12. With respect to claims 30,36,70,71,78 and 79, Oman as applied above shows the first 38 and second 39 minor flaps are substantially identical and that the first 58 and second 60 major flaps are substantially identical (fig.1).

13. Claims 9,10,33,39,68 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oman (USPN 2,001,810) and Buchalski (USPN 5,816,484) as applied to claim 1 above, and further in view of Suh (USPN 5,106,882). Oman and Buchalski as applied to claim 1, discloses the invention substantially as claimed. However, Oman and Buchalski do not specifically disclose the material, from which the container being made is alkenyl aromatic polymer foam.

Suh teaches a foam insulation material that is dimensionally stable (col. 1 ln.1-15). Suh's teachings are used in the field of endeavor, insulation.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container using Suh's material of insulating alkenyl aromatic polymer foam in order to have an insulating container with accurate dimensions so the walls and flaps aligned and fit together accurately.

***Response to Arguments***

14. Applicant's arguments filed 01/19/2007 have been fully considered but they are not persuasive. In response to applicant's argument that Buchalski does not teach "a rim encompassing and projecting laterally outwardly from the continuous body portion." Examiner interprets Buchalski to have a rim (89) that project laterally outward then make a vertical turn upward. This can be seen in figure 8 of Buchalski or applicant's rendition labeled (cross section view of two stacked containers of Buchalski).

15. In response to applicant's 2<sup>nd</sup> argument that Buchalski does not show "a number of flaps integrally connected to the rim along respective fold lines". Examiner's interprets Buchalski's rim including element (89) and the uppermost vertical portion. Therefore applican's 2<sup>nd</sup> argument is clearly shown in figure 8 of Buchalski or applicant's rendition labeled (cross section view of two stacked containers of Buchalski).

16.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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